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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

FIDELITY NATIONAL TITLE INSURANCE
COMPANY, et al,

Case No. 4:11-cv-00896 -YGR

**MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO
CHICAGO TITLE'S MOTION TO
COMPEL FURTHER RESPONSES AND
FOR MONETARY SANCTIONS**

Plaintiffs,

vs.

JAMES C. CASTLE aka J. CHRISTOPHER
CASTLE, et al.

Defendants.

Hearing

DATE: June 17, 2014
Time: 2:00 p.m.
Courtroom: 1
Judge: Hon. Yvonne Gonzalez Rogers

Trial Date: Not Set

JAMES C. CASTLE aka J. CHRISTOPHER
CASTLE, individually and as Trustee of the J.
CHRISTOPHER CASTLE IRREVOCABLE
TRUST.

Counterclaimant.

vs.

REMUS A. KIRKPATRICK aka AL
KIRKPATRICK, et al.

Counterdefendants.

And Other Related Cross-Actions and Counter-Claims

Table of Contents

Table of Contents	i
INTRODUCTION	1
LEGAL ARGUMENT	1
I. CASTLE WILL PROVIDE FURTHER AMENDED RESPONSES	1
A. CIT IS NOT ENTITLED TO AN ORDER REQUIRING VERIFIED RESPONSES TO ITS REQUESTS FOR PRODUCTION OF DOCUMENTS	1
B. CONTENT OF CASTLE'S FURTHER AMENDED RESPONSES	2
II. THE JOINT DEFENSE DOCTRINE PROTECTS COMMUNICATIONS AMONG CO- DEFENDANTS AND/OR THEIR COUNSEL RELATING TO ATTORNEY ADVICE, STRATEGY, AND DEFENSE OF THE CASE	7
III. CASTLE IS NOT REQUIRED TO PREPARE A PRIVILEGE LOG SEPARATELY IDENTIFYING EACH INDIVIDUAL ATTORNEY-CLIENT COMMUNICATION AND EACH WORK PRODUCT DOCUMENT	9
IV. CASTLE AND HIS ATTORNEY SHOULD NOT BE SUBJECT TO AN <i>IN CAMERA</i> REVIEW OF PRIVILEGED DOCUMENTS	10
V. THE REQUESTED MONETARY SANCTIONS SHOULD BE DENIED	12
CONCLUSION	13

**MEMORANDUM OF POINTS AND AUTHORITIES
IN OPPOSITION TO
CHICAGO TITLE'S MOTION TO COMPEL FURTHER RESPONSES
AND FOR MONETARY SANCTIONS**

INTRODUCTION

By this motion, Plaintiff Chicago Title Insurance Company (“CTI”) seeks burdensome and intrusive discovery orders and monetary sanctions that will do nothing to further legitimate discovery in this case and will further oppress Castle’s counsel, who is not being paid and has not been allowed to withdraw.

Castle is willing to provide reasonable further responses, as detailed below, but opposes the excessive scope of relief requested and opposes the requested monetary sanctions.

Counsel for Castle opposes the request for imposition of monetary sanctions against her and opposes any request that she be ordered to turn over any privileged documents for *in camera* review.

LEGAL ARGUMENT

I. CASTLE WILL PROVIDE FURTHER AMENDED RESPONSES

Castle is willing to provide further written responses, as stated in the most recent compliance hearing regarding the discovery matters. The parameters and content of those responses is yet to be determined. However, the amended responses need not be verified.

**A. CIT IS NOT ENTITLED TO AN ORDER REQUIRING VERIFIED RESPONSES
TO ITS REQUESTS FOR PRODUCTION OF DOCUMENTS**

CIT complained to this Court that Castle had not provided a verification of his written responses,¹ and CIT wrongfully demanded that this Court order Castle to provide verified amended responses.² Although counsel for Castle stipulated that Castle would do so, she did so

¹ See Moving MPA, 4:27-5:3 (“On March 31, 2014 ... Ms. Millington raised issues regarding ... the fact that the production was not verified.”].

² See Moving MPA, 5:13-15 (“Finally, Ms. Draper agreed ... This Court then issued an Order (Dkt 652) ... ordering CASTLE to serve amended, verified responses ...”).

1 as a matter of courtesy, and in the spirit of cooperation, and not because CTI was entitled to have
 2 the responses verified.

3 ***Au contraire, in federal practice, the response to a request for production need not***
 4 ***be signed “under oath” by the party to whom the request is directed.*** See Fed.R.Civ.Proc.
 5 Rule 26(g)(1). This contrasts with California practice, where responses to inspection demands
 6 must be verified by the party. Accordingly, although Castle did provide a verification for his
 7 amended responses to the requests for production, CTI was not entitled to demand that Castle do
 8 so, and is not entitled to register that complaint again here.

9

10 ***B. CONTENT OF CASTLE'S FURTHER AMENDED RESPONSES***

11 CTI has many complaints about the content of Castle's current amended responses, and
 12 requests that Castle further amend his responses. Castle has already stated his willingness to
 13 further amend his responses, but the parties disagree on the scope of amendment required.

14 **(1) The Parties' Agreement Regarding ESI**

15 In December 2014, the parties finally conferred regarding ESI and made an agreement
 16 regarding discovery of ESI, specifically that the parties would search their respective emails for
 17 the names of parties to this action. Castle has complied with this agreement (although Castle has
 18 not received any disclosure of ESI from CTI or other plaintiffs).

19 **(2) The Scope of Castle's Search For Responsive Documents**

20 Castle is required to make a reasonable search of the documents within his custody,
 21 possession or control and produce unprivileged responsive documents. At this point, Castle does
 22 not have hard-copy documents. The documents in Castle's possession are ESI, and Castle
 23 believes he has made a reasonable search.

24 Castle's amended responses describe the scope of his search for documents in response to
 25 CTI's Requests. Castle's search of his ESI is text-based. He does not believe that he has any
 26 non-text-searchable documents responsive to CTI's Requests, but he also does not have a way to
 27 search his hard drive for imaged documents that are not text-searchable. Castle is an individual,

1 not a mammoth corporation with great financial resources. Castle's specific responses, as well
 2 as his general prefatory comments reflect this and object to the extent that CTI's Requests seek
 3 to impose an unreasonable, burdensome or economically oppressive method to search the
 4 content of images that are not labeled or stored in folders that Castle can associate with key
 5 words in CTI's requests.

6 Castle has searched his ESI for the search terms agreed to in the parties' ESI agreements.
 7 Castle has search his ESI for communications and property addresses by searching for the first
 8 and last names of the person identified, the property addresses associated with the person
 9 identified, and the first and last names known to Castle to be associated with a person or address
 10 inquired about. The search included not only Castle's emails but also folders of documents.
 11 Castle believes that he has provided all unprivileged documents in his possession, custody or
 12 control that could possibly be responsive to the requests.

13 Castle believes that his Amended Responses have identified what he searched for, what
 14 he has, and what he has produced. However, to the extent that CTI or the Court believes that the
 15 explanation is not sufficiently clear, Castle is willing to further amend his responses. CTI's
 16 motion, however, does not identify specifics that would aid Castle in doing so.

17 **(3) Castle's Specific Responses**

18 Property Address Requests.

19 These requests are drafted in such a broad way that they necessarily call for documents
 20 protected by attorney-client privilege and as work product, including the joint defense extensions
 21 of those protections. Castle asserted those objections and will not produce such protected
 22 documents. The over-broad nature of these requests also calls for documents protected by
 23 various statutory and constitutional privileges and/or privacy rights. Castle asserted those
 24 objections to preserve them, and will not produce such protected documents if found, but his
 25 search did not find any such documents. Castle also objected that these requests are potentially
 26 uncertain with respect to use of the property address and interprets the requests as calling for
 27 documents that refer or related to the accused transactions concerning the subject property.

1 Although counsel for CTI has complained that this is a “limitation” of its request, it has not
 2 offered a different interpretation to be used. Castle believes that his interpretation has not
 3 resulted in the “withholding” of any documents or reduced the number of documents identified
 4 by his search.

5 Castle has searched the records in his possession and custody, as well as the records
 6 subject to his control (including those in the possession of his attorneys). Castle has objected to,
 7 and has not searched, the following: recorded documents (which are equally or more available to
 8 CTI); pleadings filed in court cases (also equally available to CTI); and documents produced in
 9 discovery (which counsel for Plaintiffs already have). Castle also does not agree to re-produce
 10 documents already disclosed by him in response to other requests or in voluntary disclosure.

11 Entity Requests.

12 These requests are also drafted in such a broad way that they necessarily call for
 13 documents protected by attorney-client privilege and as work product, including the joint defense
 14 extensions of those protections. Castle asserted those objections and will not produce such
 15 protected documents. The over-broad nature of these requests also calls for documents protected
 16 by various statutory and constitutional privileges and/or privacy rights, including first
 17 amendment rights of free speech, political speech and the right of association. Castle asserted
 18 those objections to preserve them, and will not produce such protected documents if found.
 19 Castle agreed to produce responsive documents relating to ownership and control of the
 20 respective entities and responsive documents relating to the accused transactions relating to
 21 properties at issue in this transaction. Castle has also produced contracts and agreements in his
 22 possession, custody or control involving such entities.

23 Castle objected to having to search for, identify or produce other documents potentially
 24 covered by the broad phrase “refers or relates to” merely because they refer to an entity as being
 25 unduly burdensome and outside the scope of discovery. Castle has objected to, and has not
 26 searched, the following: recorded documents (which are equally or more available to CTI);
 27 pleadings filed in this or other court cases and the exhibits thereto (also equally available to

1 CTI); news reports and articles published in any newspaper or magazine of general circulation
 2 (including online publications and websites); decisions of any court of this country; and
 3 documents produced in discovery (which counsel for Plaintiffs already have). Castle also does
 4 not agree to re-produce documents already disclosed by him in response to other requests or in
 5 voluntary disclosure.

6 Castle was a member of Oreplex International and of CCTT Group, and has responsive
 7 documents. However, Castle was not a member of, or involved in, GJZ Group or AFOG Group,
 8 and accordingly has very few documents that mention these entities. Finally, as Castle stated in
 9 his amended responses, the entity Recontrust Company is a captive trustee of Bank of America
 10 and as such was involved in tens of thousands of secured lending transactions that have been the
 11 subject of recorded documents, litigation and news reports. Castle did conduct a diligent
 12 electronic search for documents in his possession or custody that refer or relate to Recontrust
 13 Company and will produce any found, but objects to the request insofar as it calls for documents
 14 unrelated to the accused transactions.³

15 Defendant Communications Requests.

16 These requests are also drafted in such a broad way that they necessarily call for
 17 documents protected by attorney-client privilege and as work product, including the joint defense
 18 extensions of those protections. Castle asserted those objections and will not produce such
 19 protected documents. The over-broad nature of these requests also calls for documents protected
 20 by various statutory and constitutional privileges and/or privacy rights, including first
 21 amendment rights of free speech, political speech and the right of association. Castle asserted
 22 those objections to preserve them, and will not produce such protected documents if found.

23 Castle agreed to produce responsive documents relating to the underlying business
 24 transactions, but not materials relating to defense of the litigation, as to which Castle has asserted
 25 privileges. The documents responsive to this request fall into several groups: (1) transaction-

26³ For example, counsel for Castle has documents in her files (concerning matters of other
 27 clients), that refer or relate to Recontrust Company but are not subject to Castle's control.

1 related communications and documents, including deeds, letters, powers of attorney,
 2 securitization audits, and the like, which Castle agrees to produce; and (2) emails, as to which
 3 unprivileged emails relating to the properties or transactions at issue in this case⁴ will be
 4 produced and emails that are privileged or do not relate to the properties or transactions at issue
 5 in this case will not be produced.

(4) Castle's Preliminary Statements and General Objections

7 CTI complains that Castle has asserted a large number of general objections. Castle
 8 responds that this necessarily results from CTI's failure to propound narrowly drawn document
 9 requests.

10 All the requests here call for every scrap of papers that REFERS or RELATES to a
 11 specified address, entity or defendant. Thus, every pleading filed, every email from attorney to
 12 client, every analytical chart and memo, that in any way mentions one of these addresses, entities
 13 or defendants is vulnerable to disclosure ... including documents that are irrefutably protected as
 14 attorney-client communications and/or attorney work-product. As a result of the way the
 15 requests are drafted, it is necessary for Castle to assert these objections, regardless of what
 16 documents he has in his possession, custody or control.

17 Similarly, the excessive breadth of the requests give rise to assertion of other objections
 18 and statements of limitations on CTI's attempt to unduly burden Castle in responding to its
 19 discovery.

20 The inclusion of such objections is necessary to preserved the privileges and protections.

(5) Castle Is Not Required To Particularize Privileges in Specific Responses

22 CTI complains it cannot tell which privileges are relied upon to withhold documents
 23 otherwise responsive to a particular request. This position makes no sense as a practical matter,
 24 because there is likely to be at least one attorney-client communication and at least one work-
 25 product document withheld for every single request.

26⁴ During the course of "meet and confer," Mr. Seto agreed to limit the "communications"
 27 requests to those relating to the properties and transactions at issue in this case.

1 Nonetheless, Castle submits that CTI is not entitled to that information. In some cases,
 2 providing that information would reveal the protected information (e.g., by indicating the topic
 3 of a privileged communication). Even in cases requiring a privilege log, there is no requirement
 4 that the log identify what request the document would otherwise be responsive to. **CITE
 5

6 **II. THE JOINT DEFENSE DOCTRINE PROTECTS COMMUNICATIONS AMONG
 7 CO-DEFENDANTS AND/OR THEIR COUNSELS RELATING TO ATTORNEY
 ADVICE, STRATEGY, AND DEFENSE OF THE CASE**

8 The joint defense privilege or common interest doctrine has been long recognized in the
 9 Ninth Circuit as an extension of the attorney-client privilege. See *Hunydee v. U.S.*, 355 F.2d 183
 10 (9th Cir. 1965); *Continental Oil Co. v. U.S.*, 330 F.2d 347 (9th Cir. 1964); *United States v.*
 11 *Gonzalez*, 669 F.3d 974, 978 (9th Cir. Cal. 2012). It is not actually a privilege per se, but rather
 12 an exception to the rule on waiver where otherwise privileged communications are disclosed to
 13 third parties." *Nidec Corp. v. Victor Co. of Japan*, 249 F.R.D. 575, 578 (N.D. Cal. 2007).

14 The joint defense privilege permits a party or counsel to share otherwise privileged
 15 information with other parties facing a common litigation opponent pursuant to an agreement or
 16 understanding that the shared information remains privileged. A written agreement is not
 17 required; it may be implied from conduct and situation, such as attorneys exchanging
 18 confidential communications from clients who are or potentially may be co-defendants or have
 19 common interests in litigation." *United States v. Gonzalez*, 669 F.3d 974, 979 (9th Cir. Cal.
 20 2012).

21 The joint defense privilege has been extended to civil co-defendants because "[t]he need
 22 to protect the free flow of information from client to attorney logically exists whenever multiple
 23 clients share a common interest about a legal matter." *United States v. Schwimmer*, 892 F.2d 237,
 24 243-44, (2d Cir. 1989). It applies to civil defendants sued in separate actions, *Transmirra*
 25 *Products Corp. v. Monsanto Chemical Co.*, 26 F.R.D. 572 (S.D.N.Y. 1960). It is not limited to
 26 cases of actual codefendants, and may apply to "potential" litigation as well. *United States v.*
 27 *Gonzalez, supra*, 669 F.3d at 980.

1 The rule applies not only to communications subject to the attorney-client privilege, but
 2 also to communications protected by the work product doctrine." *In re: Grand Jury Subpoenas*,
 3 902 F.2d 244, 249 (4th Cir. 1990) (citing *Transmirra Products Corp. v. Monsanto Chemical Co.*,
 4 26 F.R.D. at 572, 578 (S.D.N.Y. 1960); *Am. Tel. and Tel. Co.*, 642 F.2d at 1298-99; *Resilient*
 5 *Floor Covering Pension Fund v. Michael's Floor Covering, Inc.*, 2012 U.S. Dist. LEXIS 104398,
 6 18-19 (N.D. Cal. July 26, 2012).

7 Once the joint defense is established, all parties are holders of the privilege. One party to
 8 a joint defense agreement cannot unilaterally waive the privilege for the other holders. *United*
 9 *States v. Gonzalez, supra*, 669 F.3d at 979-981.

10 In this case, Castle was formerly represented by attorney LaLanne as well as his present
 11 counsel Draper. LaLanne also represented other defendants in this case. The joint defense
 12 privilege protects all communications and work product materials shared between Draper and
 13 LaLanne, as well as communications and work product materials between LaLanne and his many
 14 clients, even if more than one client was named or copied on an email. The joint defense
 15 privilege also protects communications between the co-defendants made for the purpose of
 16 facilitating attorney client communications (e.g., regarding defense strategy, or what the attorney
 17 said, or what to say to the attorney).

18 Castle does not suggest that the underlying transaction documents, or pre-litigation
 19 communications between co-defendants relating to those transactions, are protected from
 20 discovery by the joint defense privilege. Those documents have been produced. The joint
 21 defense privilege applies only to common-interest communications and materials relating to
 22 defense of litigation, not the underlying real estate transactions that gave rise to the litigation.

23 All of the attorney client and work product materials for which privilege is claimed were
 24 considered to be confidential when made and protected against disclosure to Plaintiffs; and none
 25 of them are required to be produced in discovery in this case.

26

27

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1 **III. CASTLE IS NOT REQUIRED TO PREPARE A PRIVILEGE LOG
2 SEPARATELY IDENTIFYING EACH INDIVIDUAL ATTORNEY-CLIENT
3 COMMUNICATION AND EACH WORK PRODUCT DOCUMENT**

4 CTI demands that Castle prepare a privilege log identifying every individual document
5 withheld. Castle submits that CTI overstates Castle's burden and seeks to impose an
6 unreasonable and intrusive burden on Castle and his (unpaid) counsel.

7 Fed.R.Civ.Pro Rule 26(B)(5)(A) does not expressly require a privilege log. Under the
8 Rule, it is sufficient to describe the nature of the documents, communications and tangible things
9 in a manner that enables the parties to assess the claim of privilege **without** disclosing the
privileged document or content.

10 The request to prepare a privilege log individually listing all attorney-client
11 communications and all attorney work product is particularly egregious. Those documents are
12 inherently protected and no legitimate purpose is served by requiring Castle to itemize each
13 email to and from his attorneys.⁵ Not only is it unreasonably burdensome to require each
14 document in counsel's office be separately itemized, but the preparation of such a log
15 unnecessarily intrudes into the attorney-client relationship and could itself reveal the content of
16 confidential communications (e.g., through correlating log details with events that occurred to
17 infer the topic of the communication).

18 To the extent the Court should order preparation of a privilege log, Castle requests that it
19 be the minimum necessary to support a claim of attorney-client privilege or attorney work
20 product, and that Castle be permitted to identify documents in groups rather than individually:
21 for example, emails from Draper to Castle, copied to LaLanne; email from Draper to Castle,
22 copied to Draper staff; emails from LaLanne to Castle and Trites, copied to Draper, and so on.
23 all research notes and memos prepared by Castle's counsel and her staff; all charts and other

24
25 ⁵ Indeed, counsel for CTI might take a different view of the issue were Castle to (A)
26 propound a set of document requests to FNTIC asking for every communication in its
27 possession, custody ***or control*** that refers or relates to a communication with each named
plaintiff and (B) insist that FNTIC prepare a privilege log itemizing every communication it
withheld on a claim of privilege.

1 analytical materials prepare by Castle's counsel and her staff. These materials are
 2 unconditionally protected and do not need to be itemized with date, title, subject, etc. in order to
 3 be protected; indeed, it would be unreasonably intrusive to impose such a requirement. See, e.g.,
 4 *Kashin v. Hershey Co.*, 2014 U.S. Dist LEXIS 23886 (N.D. Ca. Feb. 21, 2014) establishing
 5 limits on what can be required in a discovery log.

6 As the Supreme Court has stated, "[a]n uncertain privilege, or one which purports to be
 7 certain but results in widely varying applications by the courts, is little better than no privilege at
 8 all." *United States v. Mett*, 178 F.3d 1058, 1065 (9th Cir. 1999) (quoting *Upjohn Co. v. United*
 9 *States*, 449 U.S. 383, 393 (1981)).

10 **IV. CASTLE AND HIS ATTORNEY SHOULD NOT BE SUBJECTED TO AN IN
 11 CAMERA REVIEW OF PRIVILEGED DOCUMENTS**

12 CTI also demands in its motion that the Court conduct an in camera review of all
 13 documents claimed to be privileged. Castle submits that this is another unreasonably intrusive
 14 demand and further that CTI has not established a foundation supporting *in camera* review.

15 Although a District Court is authorized to conduct *in camera* inspection of documents in
 16 order to determine whether defendants' claims of privilege are valid, *in camera* review of
 17 materials claimed to be privileged is not generally favored [*Nishka, Ltd. v Fuji Photo Film Co.*
 18 (1998, DC Nev) 181 FRD 465], and *in camera* procedures should be a rare procedure in
 19 discovery disputes [*Krenning v Hunter Health Clinic* (1996, DC Kan) 166 FRD 33].

20 The seminal case on *in camera* review is *United States v. Zolin*, 491 U.S. 554 (U.S.
 21 1989). Before a district court may engage in *in camera* review at the request of the party
 22 opposing the privilege, that party must present evidence sufficient to support a reasonable belief
 23 that *in camera* review may yield evidence that establishes that the documents are not
 24 privileged. *United States v. Zolin*, supra, 491 U.S. at 574-575. The party opposing the privilege
 25 may use any non-privileged evidence in support of its request for *in camera* review. *United*
 26 *States v. Zolin*, supra, 491 U.S. at 574l; see FRCP 104(a). However, the material for which the
 27 privilege is claimed cannot be used to determine whether *in camera* review is appropriate.

1 Here, CTI has submitted no evidence to support a reasonable belief that *in camera* review
 2 may yield evidence that establishes that the documents withheld are in fact not privileged.
 3 Instead, CTI suggests exactly what *Zolin* prohibits – that the Court review the documents and
 4 decide for herself whether they are privileged. CTI’s request extends even to correspondence
 5 between litigation co-counsel, legal research memoranda and internal law firm documents
 6 dealing only with mental impressions or strategies of attorneys – materials which are never
 7 subject to production and should normally be excluded from *in camera* review. See *In re*
 8 *Federal Skywalk Cases* (1982, WD Mo) 95 FRD 477.

9 CTI’s basis for demanding *in camera* review of all documents is nothing more than
 10 speculation – and certainly not a factual basis sufficient to meet the *Zolin* standard. CTI’s theory
 11 is nothing more than that “Plaintiff **believes** that the attorney-client privilege, the attorney work
 12 product doctrine, and the joint defense privilege are **unlikely** to apply … to the **vast majority** of
 13 documents” requested by CTI. See Moving MPA, 9:14-15 (emphasis added). If counsel for
 14 CTI had bothered to look at the documents that have already been produced, they would have
 15 seen that Castle produced over 2,000 pages of responsive documents.

16 Similarly, CTI’s suggestion – that the crime-fraud exception “may likely apply” in this
 17 case to strip Castle’s communications with Draper (or LaLanne) -- is completely without
 18 foundation or evidentiary support. This is nothing more than throwing mud at the wall to see if it
 19 sticks. CTI offers no evidence of any kind whatsoever to support its naked speculation that
 20 Draper or LaLanne⁶ rendered business advice services to Castle or any other defendant in
 21 connection with the underlying transactions or in any way provided services “to perpetuate the
 22 fraud.” Until and unless they have some evidence to support this accusation, they cannot
 23 bootstrap *in camera* review on speculation that it is possible.

24
 25

⁶ CTI states that all documents that pre-date Mr. LaLanne’s involvement in this case
 26 cannot be privileged. Mr. LaLanne represented Castle in other litigation matters that pre-dated
 27 this case. Mr. LaLanne’s attorney-client communications and work product from those other
 litigation matters are not subject to disclosure here on the mere basis of time overlap.

1 In light of CTI's failure to even proffer evidence of a factual basis adequate to support a
 2 good faith belief by a reasonable person that *in camera* review of the materials may reveal
 3 evidence to refute the privilege claim, *in camera* review is improper. See *In re Grand Jury*
 4 *Investigation*, 974 F.2d 1068, 1074-1075 (9th Cir. Cal. 1992).

5 **V. THE REQUESTED MONETARY SANCTIONS SHOULD BE DENIED**

6 Finally, CTI requests over \$14,000 in attorneys' fees. This request lacks the requisite
 7 evidentiary basis and requests fees to which the plaintiffs are not entitled.

8 There is no evidence that defendant or his attorney made the objections to discovery in
 9 bad faith or for the purpose of delay. Furthermore, if plaintiffs are entitled to any attorneys' fees
 10 whatever, they must be assessed only for preparing this motion to compel the discovery, not for
 11 drafting the discovery request, meeting and conferring and other matters relating to requesting
 12 discovery. Fed. R. Civ. Proc. 37(a)(5)(A) allows the court to order the responding party to pay
 13 the movant's reasonable expenses (including attorneys' fees) "incurred in making the motion."

14 Attorney Seto claims fees for "17.5 hours preparing the RFP to CASTLE, reviewing the
 15 Response to the RFP, attempting to meet and confer and meeting and conferring with Ms.
 16 Draper, and reviewing documents prepared by Ms. Millington related to this discovery dispute."
 17 But none of these are clearly expenses incurred in making this motion. The first three categories
 18 clearly are not: preparing the request for production, reviewing the responses to it and meeting
 19 and conferring regarding the responses were not incurred in making the motion to compel.
 20 While some of the time "reviewing documents prepared by Ms. Millington related to this
 21 discovery dispute" might have concerned this motion, the evidence is too vague to permit the
 22 court to conclude that it did or how many hours his review took.

23 Attorney Millington's declaration is similarly deficient. She declares that she "spent 31.3
 24 hours preparing Plaintiff's Statement (Dkt. 648), preparing for and attending the compliance
 25 hearing on March 31, 2014, reviewing the Amended Response and caselaw cited in it, preparing
 26 the Joint Statement (Dkt. 668), reviewing the documents produced by CASTLE, preparing for
 27 and attending the compliance hearing on April 29, 2014, and preparing this Motion and
 28 *Fidelity National Title Ins. Co, et al, v. Castle, et al* (No. 4:11-cv-00896 YGR) 12
 MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO CHICAGO
 TITLE'S MOTION TO COMPEL FURTHER RESPONSES AND FOR MONETARY
 SANCTIONS

1 supporting documents.” The only matter for which plaintiffs can recover attorneys’ fees for Ms.
 2 Millington’s work is for “preparing this Motion and supporting documents.” Since she does not
 3 identify how many hours that took, there is no evidence upon which to determine whether her
 4 work is reasonable.

5 Plaintiffs are not entitled to any attorneys’ fees and have not met their burden of
 6 establishing that they are. Therefore, the Court must deny the motion for sanctions.
 7

8 **CONCLUSION**

9 Castle has already agreed to provide further amended responses. His counsel is not being
 10 paid and is drowning in discovery minutia.

11 What the parties are arguing about – and what this court was interested in seeing briefed
 12 – were the parameters of the joint defense privilege. In its motion, CTI added a demand –on
 13 which there has been no “meet and confer” and without the required factual showing – that all
 14 privileged documents be submitted to the Court for *in camera* review, coupled with a suggestion
 15 that the crime-fraud exception may apply to make all of litigation counsel’s communications and
 16 work product discoverable in this case.

17 Castle submits that neither *in camera* review is not warranted and that the court should
 18 not order the kind of detailed privilege log but should impose reasonable limitations on any
 19 further detail to be provided by Castle in support of his privileges.

20 Castle also submits that the monetary sanctions requested are excessive, unwarranted and
 21 should be denied.

22 DATED: May 23, 2014

RESPECTFULLY SUBMITTED,

23 **DRAPER LAW OFFICES**

25 By: /s/ Ann M. Draper
 26 ANN McFARLAND DRAPER

27 Attorneys for Counter-Claimant James C. Castle
 28 (aka J. Christopher Castle)

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of the foregoing document via the Court's NEF system concurrently upon the filing of this document. All others not deemed to have consented to electronic service are being served with a true and correct copy of the foregoing via email or facsimile transmission, or by first class mail.

/s/ Ann McFarland Draper

Ann McFarland Draper